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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,090	04/15/2004	T. Douglas Mast	END5314USNP	7162
27805	7590	08/06/2008		
THOMPSON HINE L.L.P. Intellectual Property Group P.O. BOX 8801 DAYTON, OH 45401-8801			EXAMINER KISH, JAMES M	
			ART UNIT 3737	PAPER NUMBER
			MAIL DATE 08/06/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/825,090	Applicant(s) MAST ET AL.	
	Examiner JAMES KISH	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/11/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 5-17 and 23-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4 and 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/19/04, 9/11/06, 10/27/06, 1/4/07, 2/21/07, 3/16/07,</u> | 6) <input type="checkbox"/> Other: _____ |
| <u>3/20/07, 4/13/07, 7/5/07, 7/10/07, 7/11/07, 8/2/07, 8/17/07, 11/8/07, 11/26/07,</u> | |
| <u>4/22/08, 5/28/08.</u> | |

DETAILED ACTION

Election/Restrictions

Claims 5-17 and 23-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 11, 2008.

Applicant's election without traverse of the species A product claims (claims 1-4 and 18-22) in the reply filed on July 11, 2008 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 and 18-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Hadjicostis et al (US Patent App. No. 2004/0254570). Hadjicostis discloses an endoscope having a proximal end and a distal end. Located at the distal end portion are one or more piezoelectric elements operable to ablate tissue of an internal body region (see Abstract). Regarding the piezoelectric elements, see Figures 3, 4 and 8-10. The term "transducer" is used in Hadjicostis to describe **90** in Figure 2 (last sentence of paragraph 34), as well as elements **102** in Figure 3 (see paragraph 36). In one mode of

ablation operation, different subsets of elements **102** are activated in a selected sequence in accordance with operating logic (i.e., controller) of subsystem **40**. A sweep sequence can be performed that can continue for 360°. Alternatively, the sweep can be less than 360° (paragraph 42). The subsets [can] change in sequence one element at a time at uniform time intervals (paragraph 43). Subsets may be sequenced in a pattern that lacks rotational progression, subsets may be constituted of nonconsecutive elements, as well as other sequences (paragraph 46). Regarding claims 18-22 (and a first interpretation of claim 1 – see below), another embodiment provides a rotating connector rod that carries a transducer device and is coupled to a motor. The transducer is fixed to the rod. The motor exerts a force utilized to rotate connecting rod which in turn rotates the transducer device (paragraph 54). The motor and rotation rod embodiment can operate in the same fashion as that of the first described embodiment (see paragraphs 54 and 55). Therefore, rotation may occur at a uniform time interval, may sweep up to or less than 360°, etc.

Regarding “a controller which rotationally controls the medical treatment transducer to emit ultrasound to thermally ablate patient tissue...” as written in claim 1, the Examiner may interpret this to read as (First Interpretation) the transducer physically rotating, which is described by the embodiment mentioned above in paragraph 54 as related to claims 18-22. However, this may also be interpreted as (Second Interpretation) a controller which controls the emission of a transducer to emit in a rotational manner. This second interpretation does not require physical rotation of the transducer. The term “transducer” is used in Hadjicostis to describe item **90** in Figure 2

(last sentence of paragraph 34). Therefore, it can be interpreted that transducer **90** is controlled to provide ultrasonic emission in a rotational manner. Based on this argument, both interpretations are anticipated by Hadjicostis.

Regarding claim 4, “subsets may be sequenced in a pattern that lacks rotational progression; subsets may be constituted of nonconsecutive elements, as well as other sequences (paragraph 46).” Therefore, Hadjicostis is capable of performing these angular positions.

Regarding claim 21, the reference teaches that the device is capable of providing at least 360° of rotational ablation. Therefore, when the device is used twice simultaneously, it will provide multiple rotations at most equal to multiples of 360°.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES KISH whose telephone number is (571)272-5554. The examiner can normally be reached on 8:30 - 5:00 ~ Mon. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3737

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ruth S. Smith/
Primary Examiner, Art Unit 3737

JMK